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Rep. 715; *Greer* v. *Poole,* 5 Q. B. D. 272. The defendant, apparently with the *renvoi* theory in his mind, contended that the stipulation that the contract should be governed by the law of Oklahoma really meant that it should be governed by the law of Oklahoma as a whole, and that it was, therefore, governed by the law to which the Oklahoma rules as to conflict of laws would refer it; namely, the law of Kansas. The Supreme Court of Oklahoma, however, disposes of this contention by saying that the argument, if plausible, is certainly not more than plausible. R. W. C.

WHO ARE PARTIES TO A SUIT BESIDES THOSE SHOWN OF RECORD?—While the doctrine has long been recognized that others besides parties to a suit (as shown by the record) and their privies, are estopped by a former judgment, nevertheless it is surprising to note the diversity of judicial opinions upon the subject, especially where a person was acting as an attorney of one of the parties as shown by the record to the suit. In the recent case of *McMillan* v. *Barber Asphalt Paving Co.* (Wis. 1912) 138 N. W. 94, a taxpayer sued the city of Fond du Lac to enjoin the execution by it of a contract for street paving. The attorney of the contracting company which was to lay the paving appeared and participated in the defense in connection with the regular counsel of the city. The attorney made no charges to the city for his services, but he was under a general retainer from the contractor, and the latter paid all his expenses. It did not appear who had the actual control of the litigation. The court held that a judgment rendered adjudicating the invalidity of the contract was binding on the contractor, though it was not made a party to the suit.

The basic fundamental rule is that a matter once adjudicated by a court of competent jurisdiction, may be invoked as an estoppel in any collateral suit, when the same parties or their privies allege anything contradictory to it, but that it is not admissible in evidence as affecting the rights of any person not a party or privy thereto. *Hale* v. *Finch,* 104 U. S. 261; *In re Lightner's Estate,* 187 Pa. St. 237; *Kelley* v. *Chapman,* 13 Ill. 530; *Goss* v. *Wallace,* 140 Ind. 541; *Perkins* v. *Pitts,* 11 Mass. 125; *Stewart* v. *Wheeling R. R.,* 53 Oh. St .151, 29 L. R. A. 438; *Haffley* v. *Maier,* 13 Cal. 13. Upon the above rule, questions have arisen as to who are parties, and here it is that courts, seizing on slight facts, depart from harmony. "Parties," according to the definition formulated by a leading writer, are those "who have a right to control the proceedings, to make defenses, to adduce and cross-examine the witnesses, and to appeal from the decision if any appeal lies." 1 GREENLEAF, EVID., § 535. Accordingly, many courts have extended the fundamental rule above set out, to conclude persons who, while not parties as shown by the record, have nevertheless actually participated in the trial and controlled its management. *State ex rel. National Subway Co.* v. *St. Louis,* 145 Mo. 551; *Lightcap* v. *Bradley,* 186 Ill. 510; *Parsons* v. *Urie,* 104 Md. 238; *Burns* v. *Gavin,* 118 Ind. 320; *Pew* v. *Johnson,* 35 Mont. 173; *Weld* v. *Clarke,* 209 Mass. 9; *Lamberton* v. *Dinsmore,* 75 N. H. 574; *Hudson* v. *Wright,* 164 Ala. 298.

As before indicated, it is dangerous, if not impossible, to lay down any general rule, for very slight changes in the facts of a case may make a

totally different decision. For instance, a mortgagee who as agent for the mortgagor participated in the defense of an action of ejectment, by employing and paying counsel to conduct the defense, was held not bound by the judgment in a subsequent suit, *Williams* v. *Cooper,* 124 Cal. 666. So also, where it did not appear that the party was able to control the cause or to appeal therefrom, *Ottensoser* v. *Scott,* 47 Fla. 276, 66 L. R. A. 346, 110 Am. St. Rep. 137; *Central Baptist Church* v. *Manchester,* 17 R. I. 492, 33 Am. St. Rep. 893. Nor is one bound merely because he obtains a hearing of his counsel on the argument of the question in which he is interested, *Goodnow* v. *Stryker,* 62 Ia. 221; *Walters* v. *Chamberlin,* 65 Mich. 333; *Acker* v. *Ledyard,* 8 Barb. 514; *Wilke* v. *Howe, 27* Kan. 518. Nor is a city officer concluded by a judgment in a suit by a taxpayer to restrain payment of his salary, to which he was not a party, though he employed counsel to defend such suit, *State ex rel. Kane* v. *Johnson,* 123 Mo. 43. On the general question, see *Lane* v. *Welds,* 99 Fed. 286; and also *Boyd* v. *Wallace,* 10 N. D. 78, each holding that the party's action must have been open and known to the opposite party. See also *Hardee* v. *Hall,* 12 Bush. 327; *Bennitt* v. *Mining Co.,* 119 Ill. 9.

Mr. BLACK lays down three conditions which must be fulfilled before we can have an estoppel in such cases. First, the person so intervening must not be a mere intermeddler, but must appear for some interest of his own. Second, "he must have defended the action avowedly and with notice to the opposite party; and thirdly, the interposition must have been complete, so that he was practically substituted for the defendant in the management and control of the case." BLACK, JUDGMENTS, § 540. However, it is doubtful, to say the least, whether all the cases on this point could be reconciled by applying these conditions, and the task is rendered the more difficult by the modern tendency, so often noted, of loosely stating all the facts of a given case, so that many times it does not appear at all whether the opposite party had notice of the third person's interposition; or who had the management and control of the case. For a resumé of the subject from a different viewpoint, see FREEMAN, JUDGMENTS, § 174 et seq. W. W. M.

THE ADMISSIBILITY OF PRIOR CONSISTENT STATEMENTS BY WITNESSES.—The recurring difficulty relative to the admission of prior statements, variously termed consistent, consonant, and corresponding, is again emphasized in a recent Pennsylvania adjudication, *Lyke* v. *Lehigh Valley R. Co.* (Penn. 1912) 84 Atl. 595. A brief review of the case discloses the problem involved in the offer of such evidence and makes apparent a strong willingness on the part of the Pennsylvania Court to adhere to its former rulings upon this question despite the fact that numerous authorities take an opposite view. The plaintiff in an action to recover damages for personal injuries testified in his own behalf that he was present and working on the car in question at the time of the accident. Witnesses for the defendant company contradicted this testimony; and in addition to the contradiction other witnesses were presented by the company, "who testified that the plaintiff had declared to them either specifically, or in effect, that he was not on the car at that time." Further upon cross-examination of the plaintiff counsel for the defendant strongly